

H-2A Program for Temporary Agricultural Workers

What is the H-2A visa?

The H-2A visa is a nonimmigrant visa program that allows US employers to bring foreign nationals to the US to fill low-skill, temporary or seasonal agricultural jobs for which US workers are not available.

For how long can a worker stay in the US on an H-2A visa?

Generally, US Citizenship and Immigration Services (USCIS) grants H-2A classification for 10 months or less, at which time the worker returns to his or her home country. If the employer would like the worker to return for work the following year, the employer can request that USCIS renew the visa. It is also possible for a worker to change H-2A employers while still in the US and have the original visa term extended for a temporary period.

Is there a cap on the number of H-2A visas issued?

There is no cap on the number of H-2A visas issued annually for any particular country or for the program overall. In fiscal year (FY) 2011, a total of 55,384 H-2A visas were issued to all eligible countries.

How does the process work?

In order to apply for an H-2A visa, a worker must have a job offer from a US employer. US employers typically send their own recruiters to the foreign country and/or work with recruiters in the foreign country who identify workers with the necessary skills for the job. Recruiters assist workers with gathering documents and completing visa paperwork. It is illegal under US law for employers or recruiters to charge workers fees for job placement.

The following steps provide an overview of the process:

- Step 1: A US employer files an application with the US Department of Labor to demonstrate that there are no American workers who are able, willing, qualified, and available to do the work. If approved, the employer receives a “temporary labor certification.”
- Step 2: The employer files Form I-129, Petition for Nonimmigrant Worker, with USCIS, which requests H-2A workers and can specify from which country the workers should originate. This petition may or may not identify individual workers by name.
- Step 3: Once the Form I-129 is approved, prospective workers outside the US apply for an H-2A nonimmigrant visa at the US Embassy or consulate abroad.

What does a prospective worker need to know about the process at the US Consulate?

The prospective worker will need to schedule a visa appointment at the US Consulate, often with the assistance of a recruiter. At the time of the interview, the applicant will have to demonstrate to a consular officer that he or she is qualified to do the job sought, has sufficient ties to his or her home country, and that the applicant will not overstay the visa. The consular officer will likely ask the applicant questions about his family (particularly spouse and children) remaining in the home country, employment history, property and business ownership, and financial resources. The applicant must conduct the interview alone and without the assistance of others, such as the employer, recruiter, a lawyer, or family member.

Where is more information available about employers hiring H-2A workers?

Although employers usually pay recruiters to find workers for them, information about employers participating in the H-2A program is publicly available on the Internet. The H-2A Public Job Registry, with *current* job listings by state, can be found at: <http://icert.doleta.gov>. *Historical* data about H-2A employment opportunities is available at: <http://www.flcdatacenter.com/CaseH2A.aspx>.

How much money is the worker paid?

Payments can vary by many factors, such as the employer, sector, type of work, and job location, however, the US government oversees the setting of wages based on how much money other

workers get paid to do similar work. Seasonal agricultural workers employed full-time typically earn around US \$1,700 per month – though earnings vary according to skill level, crop, and whether workers are paid per-hour or per-piece. Workers are entitled to guaranteed work for at least three-fourths (3/4) of the number of workdays stated as the contract period unless the foreign worker is replaced by a US worker during the first half of the contract period.

What costs do employers of H-2A workers pay?

Agricultural employers generally cover transportation costs to and from the home country. Employers must also provide clean and safe housing to H-2A workers at no charge to the employee. Employees are responsible for their food costs, but employers must provide a place for workers to prepare their meals. Under US law, employees may be permitted to pay for reasonable travel expenses and government passport fees. An employer must arrange for a worker's transportation from the originating country to the place of employment or reimburse the worker for transportation costs.

Is there a minimum or maximum age for H-2A workers?

The minimum age can vary based on the type of employment and restrictions under state and labor laws, but H-2A workers are typically at least 18 years of age. There is no maximum age for workers, however, individuals must have the physical capacity to do the work required.

Does the H-2A visa lead to a “green card” (permanent residence) or US citizenship?

No. The H-2A is a nonimmigrant visa issued for a limited period of time. It does not put workers on a path to permanent residence in the US or American citizenship.

Can the spouse or children of an H-2A worker get a visa to the US?

A spouse and unmarried children (under 21 years of age) of an H-2A worker may seek an H-4 nonimmigrant visa, but employers are not responsible for the travel or housing costs of family members. H-4 visa holders are not authorized to work in the US but may attend school.

Resources for Additional Information:

- **US Citizenship and Immigration Services (USCIS) (www.uscis.gov)**
 - H-2A Program Overview: <http://1.usa.gov/2rSjc9>
 - H-2A Petitioners Q&A: <http://1.usa.gov/iCzhZB>
 - Form I-129, Petition for a Nonimmigrant Worker: <http://1.usa.gov/10VcN>
 - Certain Fees May Not Be Collected From H-2 Workers: <http://1.usa.gov/nt5upD>

- **US Department of Labor**
 - Hiring Foreign Workers Overview: <http://www.foreignlaborcert.doleta.gov/hiring.cfm>
 - H-2A Program Overview: <http://www.foreignlaborcert.doleta.gov/h-2a.cfm>
 - H-2A Employer Handbook: <http://bit.ly/rDNCLg>
 - Office of Foreign Labor Certification H-2A FAQs: <http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#gotoh2>
 - Foreign Labor Certification Forms: <http://www.foreignlaborcert.doleta.gov/form.cfm>

- **US Department of State**
 - Temporary Worker Visas Overview: http://travel.state.gov/visa/temp/types/types_1271.html
 - Form DS-160 Online Nonimmigrant Visa Application: http://travel.state.gov/visa/forms/forms_4230.html
 - Pamphlet on Rights and Protections for Temporary Workers (available in English and Creole): http://travel.state.gov/visa/temp/pamphlet/pamphlet_4578.html

- **Contact information for the US Embassy in Port-au-Prince, Haiti: h2nivpap@state.gov #**